

Fish and Wildlife Service: FY2012 Appropriations and Policy

Updated January 4, 2012

Congressional Research Service

<https://crsreports.congress.gov>

R41928

Summary

The annual Interior, Environment, and Related Agencies appropriation funds agencies and programs in three federal departments, as well as numerous related agencies and bureaus. Among the agencies represented is the Fish and Wildlife Service (FWS), in the Department of the Interior. Many of its programs are among the more controversial of those funded in the bill. For FY2012, the Consolidated Appropriations Act (P.L. 112-74, Division E, H.Rept. 112-331) provided \$1.48 billion for FWS, down 2% from the FY2011 level of \$1.50 billion. (This measure also provided appropriations for most federal government operations for the remainder of FY2012.) For FWS, most accounts were reduced to some degree relative to the FY2011 level.

This report analyzes the FWS funding levels contained in the FY2012 appropriations bill. Emphasis is on FWS funding for programs that have generated congressional debate or particular constituent interest, now or in recent years. Several controversies arose during the appropriations cycle over funding levels or restrictions on funding:

- The Administration proposed limitations on funds that could be used to respond to petitions to list new species under the Endangered Species Act (ESA), arguing that petitions diverted the agency from listing species with higher conservation priority; others argued that without petitions FWS would list fewer species. The Administration also proposed to limit spending on listing foreign species. Both limits were accepted.
- The House bill proposed to limit judicial review of FWS decisions concerning the delisting of gray wolves under ESA. This provision was eliminated from the final bill.
- The Administration proposed cutbacks in funding for certain fish hatcheries involved in mitigation of the effects of federal water projects. FWS argued that the mitigation burden belonged on the shoulders of the agencies responsible for the projects. Congress did cut some of the program, but also specified a transfer of funds to FWS to support hatchery mitigation.
- The Administration proposed elimination of annual appropriations for payments to counties for lost revenues due to the presence of non-taxable FWS lands. Congress continued the appropriation, with small reductions from previous appropriations.
- The House bill proposed to eliminate nearly all funding for FWS land acquisition. Congress reduced but did not eliminate the program.

All of these issues are discussed in more detail below, along with funding levels for other programs.

Contents

Introduction	1
Hot Topics	3
Endangered Species Funding	3
Authorization, Appropriation, and Authority: Key Differences.....	5
Wolf Delisting.....	6
National Wildlife Refuge System (NWRS) and Law Enforcement	7
Fisheries and Aquatic Resource Conservation	7
Cooperative Landscape Conservation and Adaptive Science	9
Land Acquisition	9
Wildlife Refuge Fund.....	10
Multinational Species and Neotropical Migrants	10
State and Tribal Wildlife Grants.....	11
For More Information.....	12

Tables

Table 1. Appropriations for the Fish and Wildlife Service (FWS), FY2010-FY2012	2
Table 2. Appropriations for Endangered Species and Related Programs, FY2010-FY2012.....	4
Table 3. Projected FWS Mitigation Expenses in FY2012 for Nine National Fish Hatcheries on Behalf of Water Project Agencies.....	9
Table 4. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2010-FY2012	11

Contacts

Author Information.....	12
-------------------------	----

Introduction

The annual Interior, Environment, and Related Agencies appropriations bill, which began its consideration as H.R. 2584 and ended as Division E of the Consolidated Appropriations Act (P.L. 112-74), funds agencies and programs in parts of three federal departments (Interior, Agriculture, and Health and Human Services), as well as numerous related agencies and bureaus, including the Environmental Protection Agency. Among the more controversial agencies represented in the bill is the Fish and Wildlife Service (FWS), in the Department of the Interior (DOI). House floor consideration of Interior and Environment appropriations was not completed, and the Senate first considered these programs in the context of Division E of the conference report on a bill whose original subject was appropriations for military construction. The House next considered FWS appropriations in the context of the conference report for the same measure.¹ As a result, the legislative history of Interior and Environment appropriations in general, and FWS specifically, is truncated relative to most years, and the emphasis below is largely on the final bill.

Congress approved \$1.48 billion for the agency for FY2012.² The President had requested \$1.69 billion (up 13% from FY2011); on July 12, 2011, the House committee approved \$1.19 billion (down 21% from FY2011). (See **Table 1.**) Most accounts and subaccounts were reduced relative to FY2011 levels. At the account level, percentage changes from FY2011 to FY2012 ranged from a reduction of 20.4% for the Cooperative Endangered Species Conservation Fund to an increase of 10.8% for Construction. This report analyzes FY2012 appropriations in a policy context, with reference to past appropriations.³

Floor action on Interior and Environment appropriations began on July 25, 2011, when the House began consideration of H.R. 2584. Consideration continued to July 28, 2011, when the House rose, leaving H.R. 2584 as unfinished business. During floor consideration, there were three amendments affecting FWS; two were adopted, and one was rejected.

The first amendment (H.Amdt. 732; Bass, NH) increased land acquisition funding by \$4 million for FWS, as well as making increases for specified other agencies, with offsetting reductions in funds for the Office of the DOI Secretary. It was adopted by voice vote. (In the end, P.L. 112-74 contained funding for land acquisition, though at a lower level than in FY2011. See “Land Acquisition.”) The second amendment (H.Amdt. 735; Dicks, WA) was also adopted; it removed certain restrictions in the bill concerning funding limitations for endangered species protection. (P.L. 112-74 contained some limits on listing; see discussion “Endangered Species Funding.”)

A third amendment (H.Amdt. 750; Dicks, WA), affecting judicial review of wolf management, was rejected; P.L. 112-74 contained no language regarding wolf management and judicial review. (See “Wolf Delisting,” below.)

¹ H.Rept. 112-331, for H.R. 2055, which became P.L. 112-74.

² Title IV of Division E contained an across-the-board reduction of 0.16% for all appropriations in Division E. The figures in this report reflect that reduction.

³ For more detail on the seven continuing resolutions approved before passage of a full-year appropriation for FY2011, and on other versions of the final full appropriation for FY2011, see CRS Report R41258, *Interior, Environment, and Related Agencies: FY2011 Appropriations*, coordinated by Carol Hardy Vincent.

Table I. Appropriations for the Fish and Wildlife Service (FWS), FY2010-FY2012
(\$ in thousands)

Fish and Wildlife Service	FY2010 Enacted	FY2011 Enacted^a	FY2012 Request	FY2012 House Comm.	FY2012 Enacted^b
Resource Management	1,269,406	1,244,861	1,271,867	1,099,055	1,226,177
—Ecological Services: Endangered Species	179,309	175,446	182,650	138,707	175,955
—Ecological Services: Habitat Conservation	117,659	112,524	118,442	78,442	110,337
—Ecological Services: Environmental Contaminants	13,987	13,316	13,825	11,825	13,128
—National Wildlife Refuge System	502,805	492,059	502,875	455,297	485,691
—Migratory Birds, Law Enforcement & International Conservation	134,640	128,224	130,048	122,048	126,566
—Fisheries and Aquatic Resource Conservation	148,214	138,939	136,012	128,343	135,317
—Cooperative Landscape Conservation and Adaptive Science	20,000	30,970	37,483	20,000	32,198
—General Operations	152,792	153,383	150,532	144,393	146,685
Construction	37,439	20,804	23,088	11,804	23,051
Land Acquisition ^c	86,340	54,890	140,000	15,047	54,632
—Acquisitions: Federal Refuge Lands	62,785	35,374	108,990	0	30,117
—Highlands Conservation Act	4,000	0	5,000	4,000	4,992
—Inholdings, Emergencies, & Hardships	5,000	4,990	5,000	3,000	4,493
—Exchanges	2,000	1,996	2,000	0	2,496
—Acquisition Management	10,555	10,534	13,570	6,570	10,538
—User Pay Cost Share	2,000	1,996	2,000	1,477	1,997
—Refuge Land Protection Planning	0	0	3,440	0	0
Landowner Incentive Program (cancellation of prior year funds)	0	-4,941	0	0	0
Cooperative Endangered Species Conservation Fund	85,000	59,880	100,000	2,854	47,681
National Wildlife Refuge Fund	14,500	14,471	0	13,980	13,958
North American Wetlands Conservation Fund	47,647	37,425	50,000	20,000	35,497
Neotropical Migratory Bird Conservation Fund	5,000	3,992	5,000	0	3,786
Multinational Species Conservation Fund	11,500	9,980	9,750	7,875	9,466
State and Tribal Wildlife Grants	90,000	61,876	95,000	22,000	61,323
—State Grants (Formula-based)	78,000	49,900	67,000	20,000	51,323

Fish and Wildlife Service	FY2010 Enacted	FY2011 Enacted^a	FY2012 Request	FY2012 House Comm.	FY2012 Enacted^b
—Competitive Grants for States, Territories, & Other Jurisdictions	5,000	4,990	20,000	0	5,732
—Tribal Grants	7,000	6,986	8,000	2,000	4,268
Total Appropriations	1,646,832	1,503,238	1,694,705	1,192,615	1,475,570

- Includes effects of a 0.2% rescission of funds contained in §1119 of Title I, Division B, of P.L. 112-10.
- Figures reflect across the board reduction of 0.16% Title IV of Division E of P.L. 112-74.
- Figure for House committee bill does not reflect House approval of H.Amdt. 732, adding \$4 million for land acquisition, because the House had not completed consideration of the bill. The amendment did not specify which subprogram would receive the additional funds.

By far the largest portion of the FWS annual appropriation is the Resource Management account, for which Congress approved \$1.23 billion for FY2012, down 1.5% from FY2011. Among the programs included in Resource Management are Endangered Species, the Refuge System, Law Enforcement, Fisheries, and Cooperative Landscape Conservation and Adaptive Science (formerly called Climate Change Adaptive Science Capacity).

Hot Topics

In the FY2012 FWS appropriations cycle several issues emerged:

- elimination of funding for the adding of new species to the list of those protected under the Endangered Species Act;
- elimination of funding for critical habitat designation;
- cuts in funding for fish hatcheries;
- restoration to near FY2011 levels for the National Wildlife Refuge Fund, a fund that provides payments in lieu of taxes to local governments for the presence of non-taxable refuge land—a program for which the President proposed no appropriation;
- elimination of annual funding for most land acquisition for the National Wildlife Refuge System; and
- response to the FY2011 legislative delisting of certain populations of gray wolves.

Each of the points above will be discussed in the appropriate account's section below.

Endangered Species Funding

Funding for the endangered species program is part of the Resource Management account, and is a perennially controversial portion of the FWS budget. Congress approved \$176.0 million, up 0.3% from the FY2011 level of \$175.4 million. The Administration's FY2012 request was \$182.6 million. (See **Table 2.**) The House Committee approved \$138.7 million; the accompanying committee report, citing the absence of a reauthorization for the Endangered Species Act (ESA), gave statistics on the low rate for recovery of listed species as evidence that the ESA has failed.⁴

⁴ H.Rept. 112-151, p. 9-10. Other observers hold that the continued existence of listed species in the face of mounting

Over half of the House committee's reduction from FY2011 level came from elimination of funding for adding new species to the list of species protected under the ESA, and for the designation of new critical habitat for species. The reductions were contained in the tables accompanying the bill; but in addition, the committee's bill language itself reinforced that elimination by directing that "none of the funds shall be used for implementing subsections (a), (b), (c), and (e) of Section 4 of the Endangered Species Act, (except for processing petitions, developing and issuing proposed and final regulations, and taking any other steps to implement actions described in subsection (c)(2)(A), (c)(2)(B)(i), or (c)(2)(B)(ii) of such section)."

Table 2. Appropriations for Endangered Species and Related Programs, FY2010-FY2012

(\$ in thousands)

Endangered Species and Related Programs	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Comm.	FY2012 Enacted ^a
Endangered Species Program					
—Candidate Conservation	12,580	11,448	11,426	10,670	11,337
—Listing and Critical Habitat ^b	22,103	20,902	24,644	0	20,869
—Critical Habitat Designation	11,632	9,472	10,431	0	7,460
—Listing	9,971	11,430	8,847	0	10,413
—International Listing	500	^c	1,500	0	1,498
—Petitions to List	^d	^e	3,866	0	1,498
—Consultation	59,307	61,877	62,888	53,462	60,943
—Recovery	85,319	81,219	83,692	74,575	82,806
Subtotal, Endangered Species Program	179,309	175,446	182,650	138,707	175,955
Related Program: Cooperative Endangered Species Conservation Fund	85,000	59,880	100,000	2,854	47,681
Total Appropriations	264,309	235,326	282,650	141,561	223,636

- Figures reflect across the board reduction of 0.16% Title IV of Division E of P.L. 112-74.
- The subprogram figures given for listing and critical habitat designation are restrictions in the law on how much of the appropriation may be spent in each of those subprograms.
- There was no specific allocation for international listings in FY2011.
- There has never been a specific allocation for listings that responded to petitions. All listing funds were derived from the single listing subprogram, funded at \$9.97 million in FY2010. (FWS listings in recent years have been almost exclusively in response to petitions.)
- There was no specific allocation for listings that responded to petitions. All listing funds were derived from the single listing subprogram, funded at \$11.43 million.

The language would have prevented listing new species or changing a species from threatened to endangered, or a designating new critical habitat. It would have allowed action to delist species or to downlist species from endangered to threatened, although with no funding in the committee's bill for the listing program it is not clear what funds would have been available for such actions. On July 26, 2011, the House considered H.Amdt. 735 (Dicks, WA) to strike this language.

habitat loss and other perils is a more suitable measure of the act's success than recovery rates. For a discussion of measures of success under ESA, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

Supporters of H.Amdt. 735 rejected the claim that the ESA has failed, and cited the continued existence of all but a few of the listed species struggling in the face lost habitat and other dangers as an alternative measure of success. The amendment passed (yeas 224, nays 202; roll call #652) on July 27, 2011. In the end, P.L. 112-74 contained limits on spending for listing species in response to petitions, for listing foreign species, and for designation of critical habitat.⁵ The limitations on listing foreign species or responding to petitions were not found in the previous appropriations bill; limitations on critical habitat designation have been a feature of appropriations bills for over 15 years.

P.L. 112-74 reduced funding for consultation under Section 7 of the ESA by 1.5% from FY2011. Under Section 7, federal agencies are obliged to consult with FWS on their actions which may affect listed species, and obtain a biological opinion (BiOp) from FWS on whether the action might jeopardize the species. The BiOp may include reasonable and prudent alternatives for the agency action that would avoid jeopardy. Reduced funding for FWS to consult could delay federal actions, because the action agency might hesitate to open its actions to the citizen suit provisions of the ESA in the absence of the FWS BiOp.⁶

The Cooperative Endangered Species Conservation Fund also benefits species that are listed or proposed for listing under ESA, through grants to states and territories. P.L. 112-74 provided \$47.7 million, down 20.4% from the FY2011 level of \$59.9 million. The program assists states with, among other things, the preparation of Habitat Conservation Plans (HCPs). HCPs are developed for non-federal actions by state, local, business or private entities as a requirement for obtaining an Incidental Take Permit for actions that may affect listed species.⁷ For HCPs involving many actors, states may use their funds from this program to coordinate the HCPs, to develop a single umbrella plan on behalf of a region, or to acquire land to mitigate effects of a project. Reduction of state support leaves states with the option of funding some of these efforts alone, or leaving individual actors to develop their own plans.

Taking the two programs together, the final bill projects savings in endangered species funding, compared to FY2011 levels, at 5.0%.

Authorization, Appropriation, and Authority: Key Differences

Because Section 15 (16 U.S.C. §1542) authorizing ESA appropriations expired in FY1992, it is sometimes said that the ESA is not authorized. However, that does not mean that the agencies lack authority to conduct actions (§§4, 6-8, 10, and 11; 16 U.S.C. §§1533, 1535-1537, 1539, and 1540), or that prohibitions within the act are no longer enforceable (§9; 16 U.S.C. §1538). Those statutory provisions continue to be law, even when money has not been appropriated.⁸ The

⁵ FWS has long argued that responding to listing petitions uses agency resources that would be better spent on listing species that the agency judges to be more in need of protection.

⁶ The citizen suit provisions are contained in 16 U.S.C. 1540(g); they have been a major factor in enforcement of ESA. This description of §7 consultation is highly simplified. For a fuller explanation see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

⁷ Incidental Take Permits allow a non-federal entity to undertake an action that is otherwise legal, but may have the incidental effect of taking a listed species. For more information, see CRS Report RL31654, *The Endangered Species Act: A Primer*, by M. Lynne Corn, Kristina Alexander, and Eugene H. Buck.

⁸ See *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999) (duty to designate critical habitat for silvery minnow existed despite inadequate funding); *Center for Biological Diversity v. Norton*, 304 F. Supp. 2d 1174 (D. Ariz. 2003) (inadequate financial resources did not excuse FWS from obligation to follow court order to redesignate critical habitat); *Conservation Council for Hawai'i v. Babbitt*, 24 F. Supp. 2d 1074 (D. Hawaii 1998) (holding that insufficient resources were an inadequate reason for failing to designate critical habitat of 245 listed plants).

expiration of a provision authorizing appropriations does not end the statutory obligations created by that law. The U.S. Supreme Court has long held that “the mere failure of Congress to appropriate funds, without further words modifying or repealing, expressly or by clear implication, the substantive law, does not in and of itself defeat a Government obligation created by statute.”⁹ Moreover, Section 11(g) (16 U.S.C. §1540(g)) “allows any citizen to commence a civil suit on his own behalf” on various broad, specified provisions of the act. This option would still be available, regardless of agency funding.

Wolf Delisting¹⁰

Appropriations bills have been vehicles for action on the status of wolves. While P.L. 112-74 contained no provisions regarding wolves, substantial action on delisting of gray wolves occurred in the FY2011 appropriation process (P.L. 112-10), and provides background for additional action occurring during consideration of the House committee bill for FY2012. Section 1713 of P.L. 112-10 removed most wolves in the Northern Rockies from the protections of ESA. This removal from the ESA’s list of protected species (or “delisting”) makes these gray wolves the 49th species to be delisted, and the only one delisted due to specific legislative action.¹¹ In April 2009, FWS had issued a regulation to delist the population of wolves that had been reintroduced in the Northern Rockies.¹² The rule removed wolves in Montana, Idaho, and parts of Washington, Oregon, and Utah from ESA protections, but the rule did not change the wolf’s status outside these five states. The wolves of Wyoming were to remain protected because FWS held that Wyoming’s proposed management plan was not adequate to avoid population declines that would result in relisting the wolves. In August 2010, a federal court overturned the rule.¹³ In addition, in November 2010, a federal district court in Wyoming ordered FWS to reconsider the Wyoming plan for wolf management, holding that FWS had acted arbitrarily and capriciously in rejecting the plan.¹⁴ Section 1713 ordered FWS to reissue the April 2009 rule and insulated the new rule from judicial review. It further stated that the section was to have no effect on the Wyoming case.¹⁵ FWS reissued the rule on May 5, 2011.¹⁶ The provision appears to leave open the option for a subsequent proposal to re-list the species.

Two factors made this delisting distinct from past efforts to delist species legislatively. First, FWS had previously delisted the species though the action was later rejected by a court. FWS had argued that the best available science supported delisting. Second, the species had met and exceeded the numeric goals for delisting in the species’ recovery plan, although some aspects of its recovery were disputed.

⁹ *United States v. Vulte*, 233 U.S. 509 (1914).

¹⁰ For more information on gray wolf controversies, see CRS Report RL34238, *Gray Wolves Under the Endangered Species Act (ESA): Distinct Population Segments and Experimental Populations*, by Kristina Alexander and M. Lynne Corn, and CRS Report R41730, *The Gray Wolf and the Endangered Species Act (ESA): A Brief Legal History*, by Kristina Alexander.

¹¹ For background on the 48 species delisted to date, see the FWS website at http://ecos.fws.gov/tess_public/pub/delistingReport.jsp.

¹² 74 *Federal Register* 15123-15188, April 2, 2009.

¹³ *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010).

¹⁴ *Wyoming v. U.S. Dept. of the Interior*, No. 09-cv-118J, 2010, U.S. Dist. LEXIS 122829 (D. Wyo. November 18, 2010).

¹⁵ §1713 specifically cites “United States District Court for the District of Wyoming in Case Numbers 09-CV-118J and 09-CV-138J on November 18, 2010.”

¹⁶ 76 *Federal Register* 25590-25592, May 5, 2011.

In H.R. 2584 (§119), the House committee addressed concerns that the re-issued rule or other rules delisting wolves might be challenged in court. The section directed that any final rule delisting wolves in Wyoming or in the western Great Lakes area not be subject to judicial review, provided that FWS had authorized the state(s) to manage the wolf population. H.Amdt. 750 (Dicks, WA) was offered to strike this section. In a recorded vote on July 27, 2011, the House rejected the amendment (yeas 174; nays 250, roll call #659), leaving the language in place. In the end, though, P.L. 112-74 omitted the House's provision.

The only language concerning wolves in the final bill was contained in the conference report (H.Rept. 112-331, p. 1051). The language instructed FWS to provide \$1 million from its ESA recovery funds to "re-instate a livestock loss demonstration program as authorized by P.L. 111-11." The program compensates ranchers for their losses due to wolf predation.

National Wildlife Refuge System (NWRS) and Law Enforcement

The final bill contained \$485.7 million for the National Wildlife Refuge System (NWRS), down 1.3% from the FY2011 level of \$492.1 million. Costs of operations have increased on many refuges, partly due to special problems such as hurricane damage and more aggressive border enforcement, but also due to increased use, invasive species control, maintenance backlog, and other demands. According to FWS, refuge funding has not been keeping pace with these demands. Combined with the rising costs of rent, salaries, fuel, and utilities, the agency says these demands have led to cuts in funding for programs to aid endangered species, reduce infestation by invasive species, protect water supplies, address habitat restoration, and ensure staffing at the less popular refuges. While some increases were provided to address these problems in recent years, the FY2009 stimulus law provided additional funding to address these concerns. One response to reduced funding has been the consolidation of refuges (called "complexing" by FWS) under a single refuge manager and staff, as a means of sharing staff and equipment. This program has met resistance from refuge supporters who argue that refuge units will lose resources and adequate supervision. Balanced against these concerns is congressional interest in general deficit reduction.

Law Enforcement is part of the Subaccount for Migratory Birds, Law Enforcement, and International Affairs. Nationwide law enforcement covers wildlife inspections at international borders, investigations of violations of endangered species or waterfowl hunting laws, and other activities. The consolidated bill contained \$62.1 million for the Law Enforcement program, down 1.2% from the FY2011 level of \$62.9 million.

Fisheries and Aquatic Resource Conservation¹⁷

The consolidated bill provided \$135.3 million for this account, down 2.6% from the FY2011 level of \$138.9 million. Within the program, Congress rejected most of the President's proposed cuts in the hatchery program, funding it at \$46.1 million rather than the requested \$42.8 million; the new level was down 5.7% from the FY2011 level of \$48.9 million. However, concern had been generated early in the FY2012 appropriations cycle when the Administration proposed that FWS negotiate reimbursable agreements with responsible parties for mitigation activities at National Fish Hatcheries. Until such reimbursement was negotiated, FWS proposed to eliminate or substantially reduce activities at the nine National Fish Hatcheries where mitigation costs were at least 40% of total operating expenses.

¹⁷ This section was provided by Eugene H. Buck, Specialist in Natural Resources, Resources, Science, and Industry Division, CRS.

FWS manages a number of hatcheries under the National Fish Hatchery System. In some cases the mandated role of a hatchery, in whole or in part, is to provide mitigation for activities by other agencies. For FY2012, FWS projected annual expenditures to mitigate projects of four agencies: Army Corps of Engineers (\$4.7 million), Tennessee Valley Authority (\$835,000), Bonneville Power Authority (\$40,000), and the Bureau of Reclamation (\$715,000). (See **Table 3.**) Nine hatcheries met or exceeded the Administration's 40% mitigation threshold: more than 40% of the benefit of the hatchery was attributed to mitigation of the effects of a water project. These nine hatcheries were then targeted for reduction or elimination of FWS support. FWS argued that some or all of the hatchery costs should be borne by the responsible water project agencies.

This issue was addressed and resolved in conference:

The conferees have restored the proposed \$3,388,000 shortfall in the budget for mitigation hatchery operations and critical supplies. An additional \$3,800,000 is appropriated elsewhere in this consolidated Act for the U.S. Army Corps of Engineers to reimburse the Service. Together, these amounts fully fund mitigation hatcheries operated by the Service for the Corps, Tennessee Valley Authority, Bureau of Reclamation's Central Utah Project and the Bonneville Power Administration. The conferees support efforts by the Service to recover costs of programs that are conducted to mitigate the environmental effects of other Federal partners. However, future budget requests must ensure that Federal partners have committed to make sufficient funding available to reimburse the Service before the Service proposes to eliminate funding for mitigations hatcheries so that operations at these hatcheries are not disrupted.¹⁸

¹⁸ H.Rept. 112-331, p. 1053.

Table 3. Projected FWS Mitigation Expenses in FY2012 for Nine National Fish Hatcheries on Behalf of Water Project Agencies

(in \$)

Hatchery	State	% M	Corps	TVA	Reclamation
Greers Ferry NFH	AR	100	541,532	—	—
Jones Hole NFH	UT	100	—	—	620,484
Chattahoochee Forest NFH	GA	99	630,915	68,102	—
Norfolk NFH	AR	98	1,030,139	—	—
Dale Hollow NFH	TN	94	267,672	598,004	—
Erwin NFH	TN	67	334,781	93,378	—
Neosho NFH	MO	60	375,236	—	—
Wolf Creek NFH	KY	58	389,325	—	—
Garrison Dam NFH	ND	40	150,372	—	—
Total	—	—	3,719,972	759,484	620,484

Source: Fish and Wildlife Service, Division of Congressional and Legislative Affairs.

Notes: % M is the fraction of the annual cost of the hatchery that can be attributed to mitigation of the effects of the federal water project. *Corps* is the U.S. Army Corps of Engineers; *TVA* is the Tennessee Valley Authority; and *Reclamation* is the Bureau of Reclamation.

Cooperative Landscape Conservation and Adaptive Science

For this program (formerly called Climate Change Planning and Adaptive Science Capacity), P.L. 112-74 provided \$32.2 million, an increase of 4% from the FY2011 level of \$31.0 million. Part of the program supports work with partners at federal, state, tribal, and local levels to develop strategies to address climate impacts on wildlife at local and regional scales. The remainder is used to support cooperative scientific research on climate change as it relates to wildlife impacts and habitat. Both portions support and work through a network of Landscape Conservation Cooperatives (LCCs) to ameliorate the effects of climate change. The LCCs are an amalgam of research institutions, federal resource managers and scientists, and lands managed by agencies at various levels of government. The conference report directed FWS to explain how it planned to integrate its LCCs with its Joint Ventures and its Fish Habitat Partnerships, as well as with the U.S. Geological Survey's Climate Science Centers, Cooperative Fish and Wildlife Research units, and Cooperative Ecosystem Studies Units.¹⁹

Land Acquisition

The consolidated bill provided \$54.6 million for land acquisition, to be derived from the Land and Water Conservation Fund. The amount was down less than 1% from the FY2011 level of \$54.9 million. The Administration had requested \$140.0 million. See **Table 1**.

¹⁹ H.Rept. 112-331, p. 1054.

P.L. 112-74 also specified that “\$5,000,000 shall be for land conservation partnerships authorized by the Highlands Conservation Act of 2004, including not to exceed \$160,000 for administrative expenses.”²⁰ The Administration’s top five acquisition priorities (of 63 listed projects) were, in descending order: Alaska Maritime National Wildlife Refuge (NWR), Silvio Conte NWR (CT, MA, NH, VT), Laguna Atascosa NWR (TX), St. Marks NWR (FL), and Cache River NWR (AR).²¹

The Migratory Bird Conservation Account is a source of mandatory spending for FWS land acquisition (in contrast to the other three federal lands agencies, which rely on annual appropriations). The MBCA does not receive funding in annual Interior appropriations bills. Rather, funds are derived from the sale of duck stamps to hunters and recreationists, and from import duties on certain arms and ammunition. For FY2011, available funds are estimated at \$58.0 million. This estimate is \$14.0 million above the previous year, and was based on the assumption that Congress would approve a proposed increase in the price of duck stamps from \$15 to \$25. No such increase has been introduced, so a more reliable estimate would be that \$44.0 million would be available for FWS land acquisition from the account.

Wildlife Refuge Fund

The National Wildlife Refuge Fund (NWRF, also called the Refuge Revenue Sharing Fund) compensates counties for the presence of the non-taxable federal lands under the primary jurisdiction of FWS. A portion of the fund is supported by the permanent appropriation of receipts from various activities carried out on the NWRs. However, these receipts are sufficient for funding a small fraction of the authorized formula, and county governments have long urged additional appropriations to make up the difference. The Administration requested no funding for NWRF in FY2012, which would have meant that based on receipts alone, counties would have received 5% of the authorized level.²² The Administration argued that the savings were justified based on low costs of refuges to county infrastructure and economic benefits to local economies from increased tourism. P.L. 112-74 rejected the Administration’s argument, and provided \$14.0 million, down 3.5% from the FY2011 level of \$14.5 million. This level, combined with receipts, will be sufficient for counties to receive 30.8% of the authorized level.

Multinational Species and Neotropical Migrants

FWS has long had a role in conserving species across international boundaries, beginning with species such as migratory birds, which spend some part of their life cycle within U.S. boundaries,

²⁰ According to the FY2012 Fish and Wildlife Service Budget Justification (p. LA-1), the Highlands Conservation Act (16 U.S.C. §3901) authorizes “the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States [CN, NJ, NY, and PA] to preserve and protect high priority conservation land in the Highlands region.”

²¹ FWS does not acquire all or even most of the lands on its priority list in a given year. As lands become available, and the various complex reviews of title records, fair market value, etc., are completed and owners are willing to sell, FWS acquires the lands. Some lands may be a high priority, but may wait years before acquisition is accomplished.

²² The National Wildlife Refuge Fund is distinct from the Payments in Lieu of Taxes (PILT) program administered by DOI, and for which many types of federal lands are eligible. In 2009, Congress made PILT a mandatory spending program for FY2008-FY2012, but did not change the Refuge Fund. As a result of the PILT formula, which will largely make up for the pro-rated NWRF payment rate but for public domain lands only, counties with acquired FWS lands will be under-compensated for revenue loss relative to counties with refuge lands reserved from the public domain. Because eastern refuges are mostly acquired land, and western refuges are mostly reserved from the public domain, effects of lower funding rates for NWRF will fall primarily on eastern counties. For further information, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

and more recently including selected species of broader international interest. One of the programs, the Multinational Species Conservation Fund, generates considerable constituent interest despite the small size of the program. It benefits Asian and African elephants, tigers, rhinoceroses, great apes, and marine turtles.²³ P.L. 112-74 provided \$9.5 million, down 5.2% from FY2011. (See **Table 4**.) The Administration requested \$9.8 million.

Congress approved \$3.8 million for the Neotropical Migratory Bird Conservation Fund, down 5.2% from FY2011. The program provides grants for the conservation of hundreds of bird species that migrate among North and South America and the Caribbean. The act requires spending 75% of the funds on projects outside of the United States.

Table 4. Multinational Species Conservation and Neotropical Migratory Bird Conservation Funds, FY2010-FY2012

(\$ in thousands)

Program	FY2010 Enacted	FY2011 Enacted	FY2012 Request	FY2012 House Comm.	FY2012 Enacted ^a
African Elephant	2,000	1,735	1,950	1,477	1,645
Rhino & Tiger	3,000	2,604	2,450	1,969	2,470
Asian Elephant	2,000	1,735	1,950	1,477	1,645
Great Apes	2,500	2,170	1,950	1,969	2,059
Marine Turtles	2,000	1,736	1,450	983	1,646
MSCF Total	11,500	9,980	9,750	7,875	9,466
Neotropical Migratory Birds	5,000	3,992	5,000	0	3,786

a. Figures reflect across the board reduction of 0.16% Title IV of Division E of P.L. 112-74.

State and Tribal Wildlife Grants

State and Tribal Wildlife Grants help fund efforts to conserve species (including nongame species) of concern to states, territories, and tribes. The program was created in the FY2001 Interior appropriations law (P.L. 106-291) and further detailed in subsequent Interior appropriations laws. (It has no separate authorizing statute.) Funds may be used to develop state conservation plans as well as to support specific practical conservation projects. A portion of the funding is set aside for competitive grants to tribal governments or tribal wildlife agencies. The remaining portion is for grants to states. Part of the state share is for competitive grants, and part is allocated by formula. This grant program has generated considerable support from state governments.

Congress provided \$61.3 million for these grants, down less than 1% from FY2011. It provided \$51.3 million for formula grants and \$5.7 million for competitive grants for states. Tribes received \$4.3 million for competitive grants. See **Table 1**, above. The Administration's request

²³ For more information on these two funds, see CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

for FY2012 was \$95.0 million. Congress specified that states must provide at least 25% matching funds for planning grants and 35% for implementation grants.

For More Information

CRS Report R41608, *The Endangered Species Act (ESA) in the 112th Congress: Conflicting Values and Difficult Choices*, by Eugene H. Buck et al.

CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

For general information on the *Fish and Wildlife Service*, see its website at <http://www.fws.gov/>.

Author Information

M. Lynne Corn
Specialist in Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.